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31 **UNITED STATES DISTRICT COURT**
 32 **NORTHERN DISTRICT OF CALIFORNIA**

33 ANIBAL RODRIGUEZ, SAL CATALDO,
 34 JULIAN SANTIAGO, and SUSAN LYNN
 35 HARVEY, individually and on behalf of all
 36 others similarly situated,

37 Plaintiffs,
 38 vs.

39 GOOGLE LLC,

40 Defendant.

41 Case No.: 3:20-cv-04688-RS

42 **[PROPOSED] ORDER GRANTING**
 43 **PLAINTIFFS' MOTION IN LIMINE**
 44 **NUMBER 9 TO EXCLUDE ANY**
 45 **REFERENCE TO THE UNTIMELY**
 46 **DISCLOSED "PRIVACY AND TERMS"**
 47 **DOCUMENT**

48 The Honorable Richard Seeborg
 49 Courtroom 3 – 17th Floor
 50 Date: August 18, 2025

[PROPOSED] ORDER

Google has disclosed opening demonstratives that display and quote from a “Privacy and Terms” document. Google included the same document in a “demonstrative” video it seeks to play during its examination of the first scheduled witness, David Monsees. Plaintiffs move under Rule 37(c) to preclude Google from relying on this document at trial. The motion is granted.

More than four years ago, Plaintiffs served an interrogatory asking to Google to identify all public disclosures to users concerning Google’s collection and use of the at-issue app activity data. Google responded to this interrogatory—three different times—yet never identified this “Privacy & Terms” document. Nor did Google produce a standalone copy of the document.

Rule 37(c)(1) is an “automatic sanction” that “prohibits the use of improperly disclosed evidence.” *Merchant v. Corizon Health, Inc.*, 993 F.3d 733, 740 (9th Cir. 2021). Having failed to disclose the Privacy and Terms document, Google cannot rely on it at trial unless Google can prove substantial justification or harmlessness. *Yeti by Molly Deckers Corp.*, 259 F.3d 1101, 1107 (9th Cir. 2001).

Google can prove neither. Google has no excuse for omitting this document from its interrogatory responses and for failing to produce a standalone copy, particularly since this document is apparently so critical to Google's defense that it plans to feature it within its opening statement. And the prejudice to Plaintiffs from Google disclosing for the first time on the eve of a trial a never-before-identified document would be extremely great.

Google is forbidden from showing the document to the jury (whether during opening statements, the “demonstrative” video during Mr. Monsees’ examination, or in any other way). Google is also forbidden from eliciting any testimony about the document’s contents.

IT IS SO ORDERED.

DATED:

The Honorable Richard Seeborg
Chief Judge of the United States District Court for the
Northern District of California